

USDC SCAN INDEX SHEET



MEG 8/25/00 10:07

3:00-CV-00701 GAMMA METRICS INC V. ANALYSER SYSTEMS

88

ANSCNTCLM.

Juanita R. Brooks (# 75934)
David S. Shuman (# 200406)
FISH & RICHARDSON P.C.
4350 La Jolla Village Drive
Suite 500
San Diego, CA 92122
Telephone: (858) 678-5070
Fax: (858) 678-5099

Attorneys for Plaintiff
GAMMA-METRICS, INC.

FILED
00 AUG 17 PM 2:47
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *Ingumeny* DEPUTY
Je

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GAMMA-METRICS, INC., a California
corporation,

Plaintiff,

v.

ANALYSER SYSTEMS COMPANY, INC., a
California corporation,

Defendant.

00cv0701 L (LAB)

**PLAINTIFF'S ANSWER TO
DEFENDANT'S COUNTERCLAIMS**

Plaintiff/Counterclaim Defendant, GAMMA-METRICS, INC. (hereinafter "GAMMA-METRICS"), answers and responds to Defendant, ANALYSER SYSTEMS COMPANY, INC.'s (hereinafter "ASYS"), a California corporation, Counterclaim as follows:

ANSWER

JURISDICTION AND VENUE

35. GAMMA-METRICS admits that this Court has subject matter jurisdiction of Claim One (For Declaratory Judgment of Non-Infringement, Invalidity & Unenforceability) pursuant to 28 U.S.C. sections 1331 and 1338(a), 35 U.S.C. section 282; and the Federal Declaratory Judgments Act, 28 U.S.C. sections 2201-2202.

ORIGINAL

JS

88

36. GAMMA-METRICS admits that venue is proper in this Court under 27 U.S.C. sections 13919(c) and 1400(b) for at least the reason that Counterdefendant Gamma-Metrics, Inc. alleges that its principal office and place of business is in this district.

THE PARTIES

37. On information and belief, GAMMA-METRICS believes that ANALYSER SYSTEMS COMPANY, INC. is a corporation organized and existing under the laws of the State of California with its principal place of business in Escondido, California.

38. GAMMA-METRICS admits it is a corporation organized and existing under the laws of the State of California, with its principal place of business in San Diego, California.

ALLEGATIONS

CLAIM ONE

(For Declaratory Judgment of Non-Infringement, Invalidity
and Unenforceability of U.S. Patent No. 4,682,043.)

39. As to paragraph 39 of the Counterclaim, GAMMA-METRICS incorporates by reference its responses to paragraphs 35-38 above.

40. GAMMA-METRICS admits that it has sued ASYS for infringement of U.S. Patent Nos. 4,682,043 and 5,732,115. Therefore, there is a substantial, actual and continuing controversy between counterdefendant GAMMA-METRICS and counterclaimant ASYS as to the infringement, validity, and enforceability of U.S. Patent Nos. 4,682,043 and 5,732,115.

41. GAMMA-METRICS denies that U.S. Patent No. 4,682,043 is not infringed by ASYS.

42. GAMMA-METRICS denies that U.S. Patent No. 5,732,115 is not infringed by ASYS.

43. GAMMA-METRICS denies that each and every claim of U.S. Patent No. 4,682,043 is invalid for failing to meet one or more of the requirements of Title 35 of the United States Code, including inter alia sections 102, 103 and/or 112.

1 44. GAMMA-METRICS denies that each and every claim of U.S. Patent No. 5,732,115
2 is invalid for failing to meet one or more of the requirements of Title 35 of the United States Code,
3 including inter alia sections 102, 103 and/or 112.

4 45. GAMMA-METRICS denies that U.S. Patent No. 4,682,043 is unenforceable against
5 ASYS due to inequitable conduct, laches, and/or unclean hands of the named inventor, J. Howard
6 Marshall and/or his attorneys for, inter alia, intentional and deceitful withholding of information
7 from the Patent Office material to the patentability of the claims of U.S. Patent No. 4,682,043.

8 46. GAMMA-METRICS denies that ASYS has a right to a declaration that U.S. Patent
9 No. 4,682,043 is invalid, unenforceable and/or is not infringed.

10 47. GAMMA-METRICS denies that U.S. Patent No. 5,732,115 is unenforceable against
11 ASYS due to inequitable conduct, laches, and unclean hands of GAMMA-METRICS and/or its
12 attorneys for, inter alia, intentional and deceitful withholding of information from the Patent Office
13 material to the patentability of the claims of U.S. Patent No. 5,732,115.

14 48. GAMMA-METRICS denies that ASYS has a right to a declaration that U.S. Patent
15 No. 5,732,115 is invalid, unenforceable and/or is not infringed.

16 **AFFIRMATIVE DEFENSES**

17 **First Affirmative Defense**

18 49. The counterclaim and each purported cause of action contained therein fails to allege
19 facts sufficient to constitute a claim or claims upon which relief can be granted.

20 **Second Affirmative Defense**

21 50. The counterclaim and each and every claim for relief therein is barred by the
22 doctrine of unclean hands.

23 **Third Affirmative Defense**

24 51. The counterclaim and each and every claim for relief therein is barred by the
25 doctrine of estoppel.

26 **Fourth Affirmative Defense**

27 52. The counterclaim and each and every claim for relief therein is barred by the
28 doctrine of laches.

Fifth Affirmative Defense

53. The counterclaim and each and every claim for relief therein as to U.S. Patent No. 5,732,115 is barred by the doctrine of assignor estoppel.

Sixth Affirmative Defense

54. All actions taken by GAMMA-METRICS in connection with the enforcement of its intellectual property rights were justifiable.

PRAYER

WHEREFORE, GAMMA-METRICS prays for judgment as follows:

1. That Counterclaim Plaintiff takes nothing by its counterclaim and that the counterclaim be dismissed with prejudice;
2. For costs of suit incurred herein;
3. For reasonable attorneys' fees to the extent allowable; and
4. For such other and further relief as the Court deems just and proper.

Dated: August 17, 2000

FISH & RICHARDSON P.C.

By: Juanita R. Brooks
Juanita R. Brooks

Attorneys for Plaintiff
GAMMA-METRICS, INC.

PROOF OF SERVICE

I am employed in the County of San Diego, my business address is Fish & Richardson P.C., 4350 La Jolla Village Drive, Suite 500

San Diego, CA 92122. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On August 17, 2000, I caused a copy of the following document(s):

PLAINTIFF'S ANSWER TO DEFENDANT'S COUNTERCLAIMS

to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

Richard J. Warburg, Esq.
Stephen Korniczky, Esq.
Wesley B. Ames
Brobeck, Phleger & Harrison, LLP
12390 El Camino Real
San Diego, CA 92130-2081

Attorneys for Defendant
Analyser Systems Company, Inc.

- ☒ **MAIL:** Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.
- ☐ **PERSONAL:** Such envelope was delivered by hand to the offices of the addressee.
- ☒ **FACSIMILE:** Such document was faxed to the facsimile transmission machine with the facsimile machine number stated above. Upon completion of the transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.
- ☐ **FEDERAL EXPRESS:** Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express.
- ☐ **EXPRESS MAIL:** Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by the United States Postal Service.
- ☐ **OVERNIGHT DELIVERY:** Such correspondence was given on the same day in the ordinary course of business to an authorized courier or a driver authorized by that courier to receive documents.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

1 I declare under penalty of perjury that the above is true and correct. Executed on August 17,
2 2000, at San Diego, CA.

3 
4 Wendy Lyn Brick

5 10047118.doc
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28